

March 3, 2004 BZA



REQUEST ANALYSIS
AND
RECOMMENDATION

04AN0194

Broadwater Associates, L. P.

Bermuda Magisterial District
15151 Timsberry Circle

REQUEST: Appeal the decision of the Director of Planning regarding prohibiting any marketing activities taking place from a recreation/community center in a Residential-Townhouse (R-TH) District.

RECOMMENDATION

Recommend that the Board uphold the decision of the Director of Planning regarding prohibiting any marketing activities taking place from a recreation/community center in a Residential-Townhouse (R-TH) District.

GENERAL INFORMATION

Location:

This property is known as 15151 Timsberry Circle. Tax ID 795-638-1293 (Sheet 34).

Existing Zoning:

R-TH

Size:

9.1 acres

Existing Land Use:

Residential

Providing a FIRST CHOICE Community Through Excellence in Public Service

Adjacent Zoning and Land Use:

North - R-TH and R-12; Residential and vacant
South - R-TH and A; Residential and vacant
East - A, R-12 and R-TH; Residential and vacant
West - A and R-TH; Residential

General Plan:

(Southern and Western Area Plan)

(Neighborhood mixed use center)

DISCUSSION

The appellant, Broadwater Associates, L.P. ("Broadwater"), appeals the decision of the Director of Planning that the Residential-Townhouse (R-TH) District does not allow a recreational facility located in the townhouse development to be used as a marketing or rental office for the townhouse development. Staff recommends that the Board of Zoning Appeals ("Board") affirm the decision of the Director of Planning.

In 1975, the Board of Supervisors rezoned 34.8 acres located on Harrowgate Road from Agricultural (A) to the Residential-Townhouse (R-TH) District. The rezoning anticipated that the property would be developed for use as "townhouses for sale". The property has remained mostly undeveloped for years and was subsequently acquired by Broadwater.

In January 2001, Broadwater obtained subdivision approval from the County to construct 223 townhouse lots on the property. Despite the expectation of the 1975 rezoning that the townhouse units would be sold, Broadwater decided instead to retain ownership of the project and to lease out the individual townhouse units.

During construction of the townhouses, an issue arose as to whether Broadwater could use a proposed recreational facility in the townhouse development as a rental office to market the townhouse units. The County advised that the (R-TH) zoning would not allow use of the recreational facility for a rental office. Broadwater later wrote the County on June 26, 2001 and, with respect to the proposed recreational facility, stated as follows:

The recreation facility will be used as an amenity feature to the residents of the Broadwater Townhomes. Specifically, it will serve as a gathering space for the residents and will house the restrooms and locker facilities for the adjoining pool. Additionally, it will house a small work out facility.

It is understood that the existing zoning of the property prohibits any marketing activities to take place from this facility.

See June 26, 2001 letter from M. Scott Copeland (attached) (emphasis added). Relying on Broadwater's acknowledgement that the zoning precluded marketing activities at the recreational

facility, the County released the building permit for the recreational facility. See Building Inspection System Department Review Remarks (attached) (permit released "per letter from M. Scott Copeland accepting restrictions on use of building").

After being advised that it could not use the recreational facility for marketing activities, Broadwater decided to use an unoccupied townhouse unit as a rental office. See Section 19-102(a) (allowing the temporary use of a model home as a real estate office for the development during construction of the development). However, Broadwater did not stop its use of the rental office in the unoccupied townhouse after it completed construction of the first phase of its project. The County received a complaint and, after investigation, issued a Notice Of Zoning Violation on March 14, 2003, to Broadwater for using a townhouse as a rental office after construction had ceased.¹

Apparently in response to the Notice Of Zoning Violation, Broadwater recommenced its original plans to use the recreational facility as a rental office. On August 29, 2003, counsel for Broadwater wrote the Director of Planning contending that the (R-TH) zoning allowed Broadwater to use the recreational facility as a rental office (copy attached). The letter states that Broadwater "desires to use two offices in the Club House (recreational facility) for rental offices, but has been advised ... that to do so, the owner must seek commercial rezoning for the parcel containing the Club House." The letter argued that rental offices would be a "valid accessory use" under the Zoning Ordinance. By letter of November 19, 2003 (copy attached), the Director of Planning advised again that the Zoning Ordinance does not allow the recreational facility to be used as a rental office in the (R-TH) district. Broadwater appealed the Director of Planning's decision to this Board.

The County's Zoning Ordinance provides that no property or building may be used "except in conformity with the district regulations for the district in which it is located." See Section 19-4. The (R-TH) District provides for certain "accessory uses". See Section 19-103. The Zoning Ordinance defines an "accessory building or use" as follows:

A building or a use of land used for a purpose incident and subordinate to that for which a main building is used, and the use of premises for a purpose incident and subordinate to the main or dominant use of the premises.

See Section 19-301. In the (R-TH) District, the Ordinance explicitly limits "accessory uses, buildings and structures" to the uses stated below:

- (a) Propagation and cultivation of crops, flowers, trees and shrubs which are not offered for sale.
- (b) Private garages, tool and storage buildings, boat houses, piers and docks. No shipping containers, trailers, vehicle bodies or similar containers shall be used for these purposes.

¹ Although, as discussed above, a model home can be used as a temporary real estate office during construction of the development, the issue before this Board is whether the *recreational facility*, not an individual townhouse unit, can be used for a rental office.

- (c) Recreational facilities as required for a project and that primarily serve the surrounding residential community.
- (d) Home occupations.
- (e) Temporary buildings or trailers devoted to purposes incidental to construction activities taking place on the premises; provided that such buildings and trailers shall be removed upon completion or abandonment of such work.
- (f) Buildings and structures devoted to maintenance and groundskeeping purposes and equipment storage.
- (g) Signs.
- (h) Other accessory uses, buildings and structures not otherwise prohibited, customarily accessory and incidental to any permitted use.

See Section 19-103.² As can be seen, a rental office is not included as an allowable accessory use in the (R-TH) District. This is in contrast, for example, to the accessory uses listed in the (R-MF) (apartments) District, which explicitly allows a “management office” as an accessory use. See Section 19-108(d). “When an ordinance is plain and unambiguous, there is no room for interpretation or construction; the plain meaning and intent of the ordinance must be given it.” Board of Zoning Appeals for the County of York v. 852 L.L.C., 257 Va. 485, 489 (Va. Supreme Court 1999). Here, the Zoning Ordinance is plain and unambiguous—the permitted accessory uses in the (R-TH) District do not include a management or rental office.

In addition, a rental office is not “customarily accessory and incidental to (a) permitted use” in the (R-TH) District. Unlike an apartment complex, a townhouse development is constructed so that the townhouses are built “on individual lots designed to be *sold* as a unit.” See Section 19-301 (emphasis added). Thus, a townhouse development normally contemplates the sale of townhouse units to individuals and not, as Broadwater has done here, ownership and management of the development by the developer.

For all these reasons, it is the opinion of the Director of Planning that a rental office, while expected in the case of apartments, is not customary or incidental in townhouse developments. See Director’s November 19th letter (an “owner’s operational interest in the management of a rental neighborhood ... is also not the typical or intended ownership pattern of a townhouse subdivision”).³

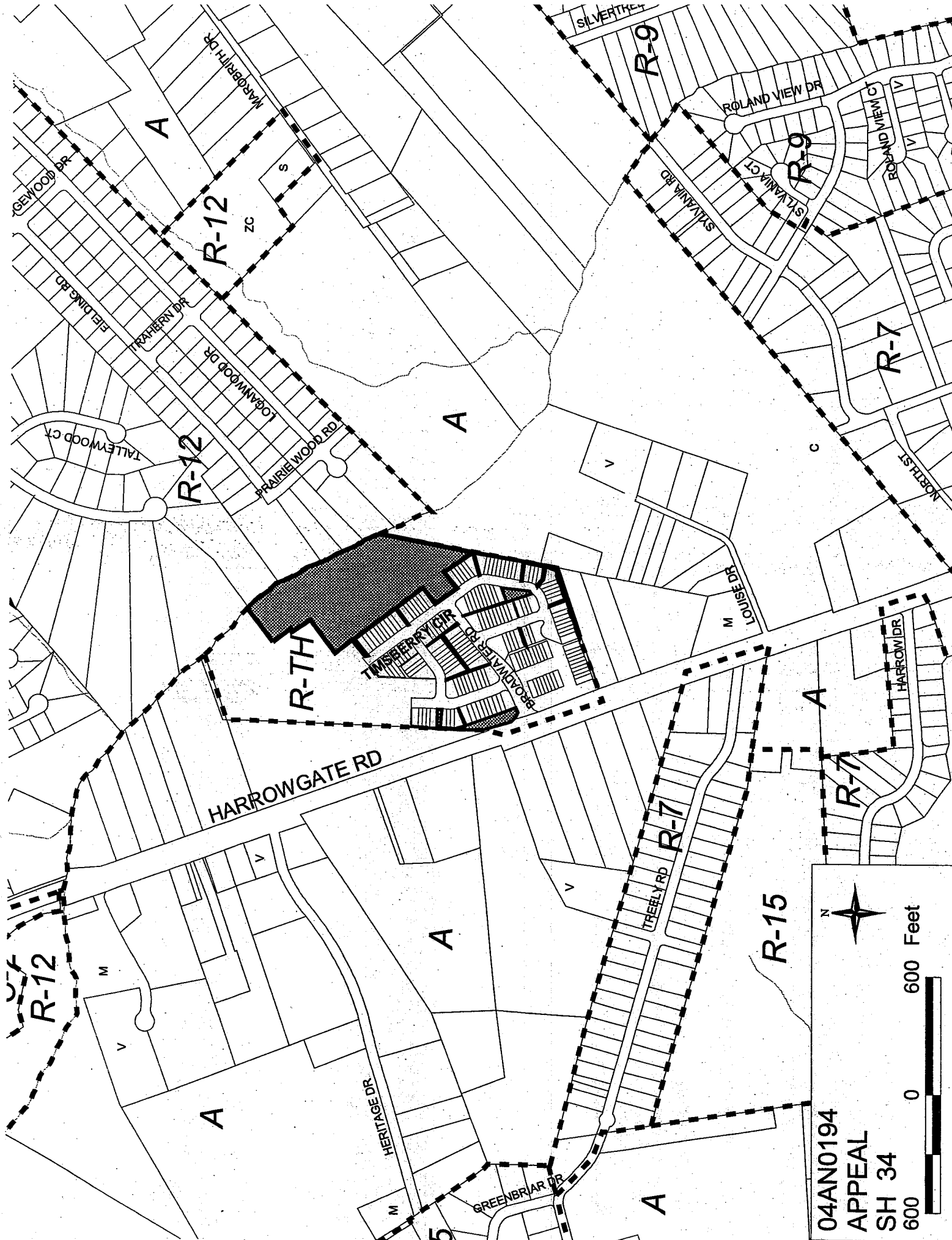
² The (R-TH) district allows: (1) “uses permitted by right”, (2) “uses permitted with certain restrictions”, (3) “conditional uses”, and (4) “accessory uses, buildings and structures”. See Section 19-101 through 19-104 (attached). On their face, it is apparent that the first three (3) categories would not allow a rental office to be located at the recreational facility and, indeed, Broadwater does not contend that they do so.

³ Moreover, the recreational facility in which Broadwater wishes to locate its rental office is, itself, not a primary use in the (R-TH) townhouse district but an accessory use instead. See Section 103(c). The Zoning Ordinance does not contemplate allowing “accessory uses” to an “accessory use”. See Section 19-301 (an “accessory use” is intended to be “incident and subordinate to the *main or dominant* use”) (emphasis added).

The "consistent construction of an ordinance by officials charged with its enforcement is given great weight." Board of Zoning Appeals for the County of York, 257 Va. at 489. A determination by the Director of Planning "is presumed to be correct." Wolfe v. Board of Zoning Appeals of Fairfax County, 260 Va. 7, 19 (Va. Supreme Court 2000). The Board of Zoning Appeals may affirm or reverse the decisions of the Director of Planning in whole or in part, or may modify the decisions. However, the affirmative vote of at least three (3) members is necessary to reverse the Director's decisions or to decide in favor of the appellant. See Va. Code Section 15.2-2312; County Code Section 19-20(d).

Since Broadwater's proposed rental offices at the recreational facility are not allowed as an accessory use, or otherwise, in the (R-TH) District, the decision of the Director of Planning as stated in his November 19th letter is manifestly correct and should be upheld.

Staff recommends that this Board uphold the decision of the Director of Planning as set forth in the Director's letter of November 19, 2003.



04AN0194
APPEAL
SH 34
600 0 600 Feet



Chesterfield County, Virginia
Department of Planning

9901 Lori Road – P.O. Box 40 – Chesterfield, VA 23832-0040
Phone: (804) 748-1050 – Fax: (804) 717-6295 – Internet: chesterfield.gov

04 AN 0194

THOMAS E. JACOBSON
Director

November 19, 2003

Mr. Oliver D. Rudy
Rudy and Mikula
P.O. Box 21
Chesterfield VA 23832

Re: Use of Broadwater Recreation Center as rental office

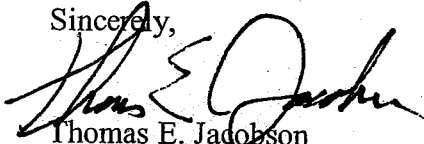
Dear Mr. Rudy:

Per your letter of August 29, 2003, staff understands that the owner of the recreation center in the Broadwater Townhouse Subdivision desires to use two offices as a rental operation office. The basis for this request is the townhouse units are rented and are not owner occupied and that you contend that the use of the building in part to collect rent should be considered as a permitted accessory use. The use that you are requesting is not specifically enumerated as an accessory use in Section 19-103. Further, one of the accessory uses is recreation facilities that primarily serve the surrounding residential community. Accessory uses are to be incidental and subordinate to the main or dominate use of the premises. This would relegate accessory use to those to support the recreation/community center operations. This proposed accessory use is also not accessory to townhouse use. It would not include supporting the owner's operational interest in the management of a rental neighborhood that is also not the typical or intended ownership pattern of a townhouse subdivision.

In fact this fact was recognized by the June 26, 2001 letter from the owner acknowledging that "it is understood that the existing zoning of the property prohibits any marketing activities to take place from this facility." (See attached letter) The decision to release the construction permit was based upon this agreement with the owner. (See attached permit review comments)

You may have the right to appeal this decision to the Board of Zoning Appeals within thirty (30) days subject their governing statutes and application requirements. This decision shall be final and unappealable if not appealed within thirty (30) days.

Sincerely,



Thomas E. Jacobson
Director of Planning

Attachments (2)

04A No 19 4

LAW OFFICES
RUDY & MIKULA

OLIVER D. RUDY
NED M. MIKULA

August 29, 2003

P.O. BOX 21 OR 58
9910 WAGNER'S WAY
COGBILL LAW BUILDING
CHESTERFIELD, VIRGINIA 23832

TELEPHONE 804-748-3600
TELECOPIER 804-748-4671

Mr. Thomas E. Jacobson
Director of Planning
County of Chesterfield
Chesterfield, Virginia 23832

Re: Interpretation of Section 19-101 through Section 19-103 of the Chesterfield County Zoning Ordinance, relating to accessory uses in a R-TH Zoning District as to TMN 794-638-8470-00000, property currently owned by Broadwater Associates, L. P.

Dear Tom:

This letter is written pursuant to Section 19-19.1 of the County Zoning Ordinance to request from you a formal opinion interpreting the provisions of Sections 19-101 through 19-103 of said ordinance, relative to accessory uses in an R-TH Zoning District.

Broadwater Associates, L. P. is the owner of this property which was zoned to an R-TH zoning classification on March 26, 1975. As you know, while the property was zoned as a "townhouses for sale" project, after the rezoning it became apparent that the highest and best use for the property lay in keeping it in one ownership, and consequently all of the units have, upon their completion, been leased rather than sold.

The owner has now been advised, I assume under Section 19-102 of the Ordinance, that the temporary nature of the rental office which has been housed in one of the units pursuant to Section 19-102, will terminate upon the completion and rental of the units which will comprise Phase Two of the Broadwater Project, and that the unit now being used as the office must be abandoned.. Subsequent to this termination, the owner desires to use two offices in the Club House for rental offices, but has been advised verbally by your office that to do so, the owner must seek commercial re-zoning for the parcel containing the Club House.

The Club House, of course, as in similar developments, is a multi-purpose building containing 1,778 square feet, located at the end of Broadwater Road as you enter from Harrowgate Road. It houses an exercise room, a community room, rest rooms, maintenance rooms, a room containing equipment for the swimming pool operation and two small offices which together contain a total of 312 square feet. The offices will be

Mr. Thomas E. Jacobson
August 29, 2003
Page Two

used as a place to maintain the project, to collect rent, to organize activities within the development, and to generally serve to residents of Broadwater Townhouses.

For your consideration I am enclosing a copy of the floor plan of the Club House.

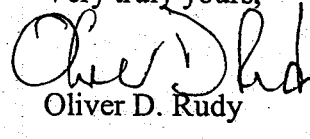
The owner of the property believes that the offices in question constitute a valid accessory use as defined in Section 19-103 of the Zoning Ordinance, which specifically permits, *inter alia*, (a) tool and storage buildings, (b) recreational facilities for a project and that primarily serves the surrounding residential community, (c) buildings which are devoted to maintenance, groundskeeping purposes and equipment storage and (d) other accessory uses not otherwise prohibited, customarily accessory to any permitted use.

There is no specific prohibition in the sections relating to the R-TH district of an office use in this kind of a project; in fact, it is the owner's position, that when Section 19-103 and Section 19-301 are read together, the Club House and its multi-uses are clearly an Accessory building and use, in that its existence and use is incidental and subordinate to that for which a main building is used, and that the premises are being used for purposes incidental and subordinate to the main or dominant use of the premises.

Finally, there is no practical reason to require a commercial re-zoning of the property on which this Club House is located, just because rent is collected on the premises. If the town houses were for sale, the collection of Association Dues in these offices would never be questioned, and would clearly be permitted.

The owner respectfully requests that you opine that its use of the Club House for all of the uses set forth above in the fourth paragraph of this letter constitute legally permitted accessory uses of said facility.

Very truly yours,


Oliver D. Rudy

Enclosures

cc: Peter L. Henderer, Esquire
Alan S. Buffenstein, Esquire

BROADWATER
04 AND 194

RST DEVELOPMENT, L.L.C.

June 26, 2001

VIA FACSIMILE AND U.S. MAIL

Mr. David Hainley
Director of Planning
Chesterfield County
Planning Department
9901 Lori Road
Suite 203
Chesterfield, Virginia 23832

RECEIVED
JUL 02 2001
DIRECTOR
PLANNING DEPT

Re: Broadwater Townhomes
Recreation Facility

Dear Mr. Hainley:

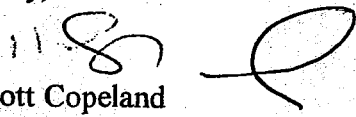
Please accept this correspondence as a description of Broadwater Townhomes, L.P.'s intended use for the recreation facility within the Broadwater Townhome subdivision.

The recreation facility will be used as an amenity feature to the residents of the Broadwater Townhomes. Specifically, it will serve as a gathering space for the residents and will house the restrooms and locker facilities for the adjoining pool. Additionally, it will house a small work out facility.

It is understood that the existing zoning of the property prohibits any marketing activities to take place from this facility.

Should you have any questions or comments, please feel free to contact me at (301) 816-4243. Thank you in advance for your time and consideration.

Sincerely,


M. Scott Copeland
Partner, Broadwater Townhomes, L.P.

BIM330B
= FUNCTION

*** BUILDING INSPECTION SYSTEM ***
DEPT. REVIEW REMA

11/18/

04AN0194

PERMIT NO.: C088577C000B0 REVIEWER: ABS INSP.TYPE:
JOB LOCATION: 15151 TIMSBERRY CR APT:
SELECT DEPARTMENT: PL REMARKS TYPE: D

INSP.SEQ:

A/ U/	TYP/	1	5	10	15	20	25	30	35	40	45
D	DEPT	DATE	TIME
X	D PL	010525	083758	SITE PLAN DOES NOT MATCH BUILDING PLAN, MUST							
X	D PL	010525	083759	AMEND SITE PLAN TO SO CORRECT BUILDING.							
X	D PL	010525	083760	BUILDING USE AS PRIMARILY BUSINESS IS NOT							
X	D PL	010525	083761	ALLOWED PER ZONING.							
P	D PL	010628	142027	RELEASED PER LETTER FROM M. SCOTT COPELAND							
P	D PL	010628	142028	ACCEPTING RESTRICTIONS ON USE OF BUILDING.							

QUERY FUNCTION COMPLETE

=UPDATE Q=QUERY (PERMIT) B=BROWSE (RESTART) C=QUERY (CLIENT) R=UPDATE
F1=HELP F3=END F7=BACKWARD F8=FORWARD X=CLEAR RMRKS (INSP.HIST)

Sec. 19-98. Special exceptions.

The following uses may be allowed as special exceptions in the R-7 District, subject to the provisions of section 19-21: Those uses permitted as special exceptions in the R-88 District. (Code 1978, § 21.1-90)

Sec. 19-99. Required conditions.

The conditions specified in this section shall be met in the R-7 District:

- (a) *Lot area and width.* Each lot shall have an area not less than 7,000 square feet and a lot width of not less than 50 feet, provided that such lot was granted tentative subdivision approval prior to November 13, 1985, and recorded prior to January 1, 1989. If such tentative approval is not renewed and expires or if a new subdivision is granted tentative approval after November 13, 1985, each lot shall have an area not less than 9,000 square feet and a lot width of not less than 75 feet.
- (b) *Percentage of lot coverage.* All buildings, including accessory buildings, on any lot shall not cover more than 30 percent of the lot's area.
- (c) *Front yard.* Minimum of 30 feet in depth. On lots located along cul-de-sacs, if the radius of the cul-de-sac is 40 feet or less, the building setback around the cul-de-sac shall be at least 30 feet. When the radius of the cul-de-sac is more than 40 feet, the building setback shall not be less than 25 feet. Minimum setbacks shall be increased where necessary to obtain the required lot width at the front building line. Through the subdivision process, an additional setback of up to 25 feet may be added to the minimum setback, if the lot is located along an arterial or collector street. This additional setback requirement will be noted on the record plat.
- (d) *Side yard.* Two side yards, each a minimum of 7½ feet in width; provided that on

any lot which was recorded as of December 11, 1945, the width of either side yard shall not be less than five feet.

- (e) *Corner side yard.* Minimum of 25 feet; except that subdivision lots recorded prior to April 1, 1974, shall observe corner side yards of 15 feet and a corner lot back-to-back with another corner lot shall have a corner side yard not less than 15 feet.
- (f) *Rear yard.* Minimum of 25 feet in depth. (Code 1978, § 21.1-91; Ord. of 2-21-01, § 1)

Sec. 19-100. Manufactured homes prohibited except under certain conditions.

The board of supervisors may grant a permit, with or without conditions, for the original location of a temporary manufactured home in an R-7 District and the permit shall specify the location of such home on the premises and shall assure compliance with county health and sanitary requirements. The permit shall be valid for up to seven years. At the expiration of the time specified on the permit, an application may be made for renewal of the manufactured home permit. (Code 1978, § 21.1-92; Ord. of 9-25-96, § 1; Ord. of 11-14-01, § 1)

DIVISION 11. R-TH RESIDENTIAL-TOWNHOUSE DISTRICT

Sec. 19-101. Permitted uses by right.

The following uses shall be permitted by right in the R-TH District:

- (a) Townhouses.
- (b) Group homes. (Code 1978, § 21.1-94)

Sec. 19-102. Uses permitted with certain restrictions.

The following uses shall be permitted in the R-TH District subject to compliance with the following conditions and other applicable stan-

dards of this chapter. If these restrictions cannot be met, these uses may be allowed by conditional use, subject to section 19-13:

(a) Model homes, provided that:

- (1) In addition to its permanent use as a dwelling, such home may be used as a temporary real estate office.
- (2) The temporary real estate office is only used to market the development in which the dwelling is located and is not used for the sale of lots or houses outside of the platted subdivision in which it is located.
- (3) The temporary real estate office is incidental to construction activity taking place in the development.
- (4) The dwelling is not the primary real estate office for the company marketing the subdivision.
- (5) The dwelling is not used as a construction office or for the storage of construction equipment and/or materials.

(b) Family day-care homes, provided that no more than five children exclusive of the provider's own children and any children who reside in the home receive care at any one time during a 24-hour day.

(Code 1978, §§ 21.1-45, 21.1-95; Ord. of 8-22-01, § 1)

Sec. 19-103. Accessory uses, buildings and structures.

The following accessory uses, buildings and structures shall be permitted in the R-TH District:

- (a) Propagation and cultivation of crops, flowers, trees and shrubs which are not offered for sale.
- (b) Private garages, tool and storage buildings, boat houses, piers and docks. No shipping containers, trailers, vehicle bodies or similar containers shall be used for these purposes.
- (c) Recreational facilities as required for a project and that primarily serve the surrounding residential community.

- (d) Home occupations.
- (e) Temporary buildings or trailers devoted to purposes incidental to construction activities taking place on the premises; provided that such buildings and trailers shall be removed upon completion or abandonment of such work.
- (f) Buildings and structures devoted to maintenance and groundskeeping purposes and equipment storage.
- (g) Signs.
- (h) Other accessory uses, buildings and structures not otherwise prohibited, customarily accessory and incidental to any permitted use.

(Code 1978, § 21.1-96)

Sec. 19-104. Conditional uses.

The following uses may be allowed by conditional use in the R-TH District, subject to the provisions of section 19-13:

- (a) Child and adult care centers and nursery schools.
- (b) Planned developments.
- (c) Public and private utility uses, so long as they require a structure, to include all water, waste water, solid waste disposal, electric, gas, communications and natural gas, liquefied, petroleum gas (LPG) and petroleum products transmissions facilities; in addition, natural gas, liquefied petroleum gas and petroleum products transmission facilities above or below ground. The following utility uses shall be permitted without obtaining a conditional use: public water and waste water lines and appurtenances; service lines to individual users; and cables, wires or pipes above or below ground when such uses are located in easements on public roads or in public roads.
- (d) Group care facilities.
- (e) Subject to the following requirements, other uses that are not specifically enumerated in this chapter and that are of the same general character as the specifically enu-

merated uses allowed in this district. Before the planning commission and board of supervisors hear an application pursuant to this subsection, the director of planning shall consider, among other things, the following: the size and proposed configuration of the site; the size, height and exterior architectural appearance of any proposed structure or structures; noise; light; glare; odors; dust; outdoor activities; traffic; parking; signage; and hours of operation. Based on these considerations, he shall determine that the proposed use's operating characteristics are substantially similar to, and its impact on neighboring properties no greater than, the operating characteristics and impacts of the specifically enumerated uses allowed in this district.

(Code 1978, § 21.1-97; Ord. of 8-22-01, § 1)

Sec. 19-105. Required conditions.

The purpose and goal of the following conditions is to create developments that protect against overcrowding, undue density of population, obstruction of light and air and that are attractive, convenient and harmonious. To this end, buildings should be designed to impart harmonious proportions and to avoid monotonous facades or large bulky masses. Townhouse buildings should possess architectural variety but enhance an overall cohesive residential character. Character should be achieved through the creative use of design elements such as balconies and/or terraces, articulation of doors and windows, sculptural or textural relief of facades, architectural ornamentation, varied rooflines or other appurtenances such as lighting fixtures and/or planting. Townhouse rows of more than six units shall be clustered and employ sufficient variety of setbacks between units to avoid monotonous facades and bulky masses.

The conditions specified in this section shall be met in the R-TH District, except as noted in section 19-106:

- (a) *Lot area and width.* Each lot shall have an area not less than 1,520 square feet and a lot width of not less than 19 feet; except end lots in townhouse groups or

rows having less than five lots shall have lot area of not less than 2,320 square feet and a lot width of not less than 29 feet and end lots in townhouse groups or rows having five or more lots shall have a lot area of not less than 2,720 square feet and a lot width of not less than 34 feet.

- (b) *Percentage of lot coverage.* All buildings, including accessory buildings, on any lot shall not cover more than 50 percent of the lot's area. No accessory building on any lot except for a private garage shall cover more than 225 square feet.
- (c) *Setbacks from major arterials.* All buildings in the R-TH District shall have minimum 50-foot setbacks from the proposed rights-of-way, as indicated on the comprehensive plan.
- (d) *Front yard.* Minimum of 20 feet in depth. Minimum setbacks shall be increased where necessary to obtain the required lot width at the front building line.
- (e) *Side yard.* A side yard of not less than ten feet in width shall be provided for each end residence in townhouse groups or rows having four or fewer lots. Townhouse groups having five or more lots shall have a minimum side yard of 15 feet.
- (f) *Corner side yard.* Minimum of 25 feet.
- (g) *Rear yard.* Minimum of 25 feet in depth.
- (h) *Driveways and parking areas.* All roads, driveways and parking areas shall have concrete curbs and gutters. All private driveways and parking areas shall be at least 15 feet from the right-of-way of any existing or proposed public road, except for those roads indicated on the comprehensive plan as major arterials where the setback shall be increased to 50 feet. In all cases, these setbacks are subject to the provisions of section 19-555 of the Development Standards Manual.
- (i) *Group or row design.*
 - (1) The total number of lots within each attached group or row of townhouses

shall be varied, but in no case exceed ten, and shall be designed and sited as outlined herein.

- (2) The front yard setback of each townhouse unit shall be varied at least two feet from the adjacent unit; every third unit shall vary at least four feet from the adjacent unit.
- (j) *Minimum acreage.* Each townhouse development shall have a minimum of ten gross acres.
- (k) *Density.* Density shall not exceed eight dwelling units per gross acre. Gross acreage is defined as all land within the exterior boundaries of the tract on which the development is located including private lots, private drives, parking areas, recreational areas, public streets and other public or semipublic uses established as part of the development plan.
- (l) *Frontage on public street.* All lots shall have frontage on a public street, or access thereto by common right-of-way within 500 feet. Townhouse lots not fronting on a public street shall front on paved accessways designed and constructed in accordance with VDOT paving specifications for subdivisions and secondary roads. All public and private streets within an R-TH project shall install street trees in conformance with subsection 19-518(h), street trees.
- (m) *Common area.* A minimum of 20 percent of total gross acreage shall be provided as common open area, exclusive of drive-ways, parking areas and recreational areas. Within this area, a minimum common area of five feet in width shall be provided adjacent to all groups of lots except where the groups front or abut a public street.
- (n) *Common areas and ownership of property.* Common areas which are not contained in lots or streets conveyed to individual owners shall be maintained by and be the sole responsibility of the developer-owner of the townhouse development, unless and until the developer-owner conveys the com-

mon area to a nonprofit corporate owner, whose members shall be all of the individual owners of townhouses in the development, or to a nonprofit council of co-owners as provided under Code of Virginia, § 55-79.1 et seq. The land shall be conveyed to and be held by the nonprofit corporate owner or the nonprofit council of co-owners solely for the recreational and parking purposes of the individual townhouse lot owners. If the developer-owner makes the conveyance to a nonprofit corporate owner, deed restrictions and covenants, in a form and substance satisfactory to the county attorney, shall provide, among other things, that any assessments, charges and costs of the maintenance of the common areas shall constitute a pro rata lien against the individual townhouse lots, inferior in lien and dignity only to taxes and bona fide duly recorded deeds of trust on each townhouse lot. An applicant, seeking to subject property to townhouse development under this article, whose ownership or interest in the property is held by a valid lease, shall provide for an initial term of not less than 99 years in such lease.

- (o) *Recreational area required.* An area conveniently accessible to and included within the development consisting of not less than ten percent of the gross acreage shall be provided for suitable recreational use by the occupants, and in no event shall less than 1½ acres be provided. Recreational facilities, including active and passive recreation and community buildings shall be provided, as deemed appropriate during tentative subdivision approval. Issuance of occupancy permits for townhouses shall be in conjunction with the phasing of recreational facilities in accordance with the approved subdivision plan.
- (p) *Architectural plans and landscaping plans.* In conjunction with tentative subdivision plan submission, architectural renderings/